In the Supreme Court of the United States

OCTOBER TERM, 1957

THE IVANHOE IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 122
THE MADERA IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 123
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THE SANTA BARBARA COUNTY WATER AGENCY, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 125

On Appeal from the Supreme Court of the State of California

Petition for Rehearing and Clarification

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On Appeal from the Supreme Court of the State of California

Petition for Rehearing and Clarification

Pursuant to Rule 58(1) of the Rules of this Court, appellees respectfully petition for a rehearing and clarification of the Court's decisions and judgments in the above cases, entered June 23, 1958. By order of July 8, 1958, Mr. Justice Clark extended to and including August 7, 1958 the time for the filing of such petition.

As grounds for rehearing and clarification, appellees submit that (I.) the Court seemingly disposed of the cases in

a manner contrary to the position of all of the parties, and in disregard of an express concession made by appellants in appellees' favor both in brief and at oral argument, and (II.) the premises developed in the Court's single, consolidated opinion do not support the ultimate conclusions and decisions reached in any of the four cases.

SUMMARY STATEMENT OF GROUNDS FOR REHEARING AND CLARIFICATION

Both in brief and at oral argument the parties stated their mutual understanding that, even should appellants' views prevail, the cases would need to be remanded to the Supreme Court of California for decision of one or more state questions left unanswered. Appellants' concessions in this regard were properly explicit, both in brief and at oral argument. The Court's opinion, nevertheless, is unclear as to the disposition it intends. At one point the opinion seems to state that all issues are controlled and resolved by federal law.

In other cases, the Court has taken care expressly to leave open the state questions remaining for decision, and has required lower courts to correct their judgments in order expressly to permit further determinations. The Court should manifestly do no less in the present important litigation. This is the substance of our Point I.

Our second ground, Point II, is even more serious. These cases involve validation proceedings with respect to purported contracts between the United States and state irrigation districts which the latter lack authority to enter into under state law. If the Court has now undertaken by federal authority to validate such contracts, these decisions seemingly represent an unjustifiable extension of federal power in disparagement of both the legislative and judicial au-

thority of the states. In reversing the Supreme Court of California's holding that the contracts were invalid, the Court points to no federal enactment which *imposes the contracts,* and expressly disavows any intent to determine whether Congress could constitutionally do so.

The decisions of the 1930's which were considered by some as representing an extension of federal authority were decided largely under the commerce clause. The power to regulate commerce among the several states is, of course, specifically delegated to Congress by Article I, Section 8 of the Constitution. There is no doubt that, when constitutionally exercised, this is a regulatory and coercive power, which overrides any conflicting state enactment. Although close questions were presented, the Court's decisions that the power to regulate interstate commerce carries with it the power to regulate matters affecting such commerce provide a rational and understandable test.

In contrast, the present cases do not bring into play the the commerce power or any other specifically-enumerated regulatory power of Article I, Section 8; rather, involved here is the vague authority of the Congress to collect taxes and spend for the "general welfare" of the United States and, under Article IV, Section 3, to manage and dispose of property acquired as a part of such a program. Authority under these provisions, unless reasonably limited by the essential requirements of a federal system, could be vagrant and unconfined. For that reason, the Court heretofore has applied these provisions with the greatest circumspection. If under these grants of authority the central government could coerce and override the states, there would be little if anything left of a federal system. Aware of this, the Court has heretofore repeatedly stated that under these provisions the central government must respect state law.

The present decisions seem to break loose from these moorings, although the Court's opinion does not underscore the vast significance of the action taken. We believe this is a clear case for the granting of a rehearing.

DISCUSSION

I. Unanswered Questions of State Law Remain and Should Be Expressly Left Open for Final Decision by the Supreme Court of California.

The unanswered state question as to the validity of the election notices. Among the unanswered questions of state law which would appear to remain, we refer to the two which stand out most clearly. In the state courts, appellees contended that the notices of special election with respect to the contracts at issue, in omitting to state the maximum amounts to be payable to the United States for construction purposes and cost of water supply and acquisition of property, failed to comply with Section 23223 of the California Water Code.[1] This contention, which if valid would vitiate the purported contracts under state law, was made in Nos. 122, 123 and 125, and would likewise control No. 124, which involves the contract presented for confirmation in No. 123.

In Nos. 122 and 123, the trial courts held for appellees on this issue, determining that the election notices were invalid under the aforesaid Section 23223. (R. 118-120, 168—No. 122; R. 303-304, 305-306, 359-360, 372—No. 123.) The Supreme Court of California, having held the contracts

1. Section 23223 of the California Water Code provides:
"Notice of election: Contents. Notice of the election shall contain in addition to the information required in the case of ordinary bond elections *a statement of the maximum amount of money to be payable to the United States for construction purposes and cost of water supply and acquisition of property*, exclusive of penalties and interest, and a general statement of the property, if any, to be conveyed by the district pursuant to the contract." (Emphasis ours.)

invalid on other grounds, noted this issue in Nos. 122, 123 and 125 but left it *unanswered* as unnecessary to its decisions. (AJS 62—No. 122; AJS 153-154—No. 123; AJS 222—No. 125.)

The unanswered state question as to the exclusion of the Albonicos' "excess" land from the Madera Irrigation District. In No. 124, a proceeding for a writ of mandate, the trial court entered a judgment in the alternative, requiring either that the Albonicos' land in excess of 320 acres be supplied with water by the district or that the land be excluded therefrom. (R. 418-420.) The Supreme Court of California modified this judgment by striking the alternative under which the land might be excluded. This action the court took in view of its holding that the Albonicos' land in excess of 320 acres could not be denied a fair and ratable portion of the water to be distributed. (AJS 183.) If the contract involved in this case, with the Madera Irrigation District, is valid, so as to deny water to such land, the unanswered question is whether the Albonicos are not entitled under state law to have it excluded from the District.

The position of the parties before this Court. Appellees' brief pointed out that state questions remained unanswered which, even if appellants' views were to prevail, would require remand. (Appellees' brief, pp. 32, 44, 91.) The correctness of this statement was conceded by appellants in their reply brief at page 19. Further, at oral argument Mr. Goldberg, for appellants, correctly observed:

> "• • • Unfortunately, even if we succeed in obtaining a reversal, that does not necessarily mean the end of this litigation. There has been at least in the Ivanhoe and Madera cases, there has been a State ground left open which the California Court simply hasn't determined. So we can't say with any assurance what will happen to the cases if they are reversed."

sions of the Court should be clarified in order to assure that the state grounds above discussed remain open for ultimate determination by the Supreme Court of California.

II. The Reasoning of the Court's Opinion Does Not Support a Determination That the Contracts Are Valid.

The Court's opinion recognizes (pp. 3, 12, 14) that the court below held the contracts invalid upon its determination that various of their provisions were "contrary" to "California law". However, the opinion reasons that the court was in error in so applying state law. And this error, according to the opinion (pp. 3, 12, 14, 15-16), derived from the California court's mistaken interpretation of Section 8 of the Reclamation Act of 1902.[4]

For purposes of this petition, it may be assumed that the California court's interpretation of Section 8 was erroneous. We submit that, even on this assumption, it does not follow that the Supreme Court of California was wrong in applying state law. The critical deficiency of the opinion, we urge, is its failure to supply a causal relation between these two propositions. Granting that the court below (1) misunderstood Section 8, we maintain that it was nevertheless right (2) in applying state law, at least so far as the contractual powers of its irrigation districts are concerned.

Involved in these cases is the validity of purported con-

4. We respectfully deny that the Supreme Court of California was in error in interpreting Section 8 of the 1902 Act as reaffirming the integrity of state water law in the field of irrigation. We continue to maintain that Section 5 of the 1902 Act (acreage limitation) and Section 8 (integrity of state water law) can be reconciled when understood to mean that the Secretary of the Interior is directed to proceed in accordance with state law, and therefore to effectuate the acreage limitation only where consonant with state law. The Court's opinion, as we believe, has, at least within the context of these cases, effectively obliterated Section 8, contrary to more than a half century of irrigation law and in disregard of its numerous prior decisions, discussed in appellees' brief at pages 53-60, giving Section 8 the meaningful application it would appear to deserve.

tracts between the United States and state-created irrigation districts. As the opinion recognizes (pp. 1-2, 18-19), Congress deliberately elected to proceed by way of contract, invoking by way of constitutional support the spending power under the general welfare clause and the authority to manage and dispose of federal property. The Court's opinion does not deny the general proposition that a purported contract must be held invalid if one of the parties—here, the state-created irrigation district—lacks authority to enter into it under relevant state statutory and constitutional provisions. This proposition must be true, we submit, in the absence of any overriding federal regulatory power, constitutionally supported. We therefore begin with purported contracts invalid from the standpoint of state law and look for the federal power, if any exists, which has been exercised to vitalize them. It appears that the Court's opinion is no more successful than were the parties or the Solicitor General in finding any such federal authority.

(1) Control of a state's waters for irrigation purposes is constitutionally reserved to it, barring exercise of the commerce power or some other constitutional authority.[5] Section 8 of the Reclamation Act of 1902 was stressed by appellees as confirming the constitutional division of power between central government and state, and the intent of Congress to test the validity of contracts dealing with irrigation water by state law in so far as the authority of the contracting irrigation district was concerned. Obliterating Section 8 does not provide the missing federal statutory basis to authorize state irrigation districts to do what they could not otherwise do under state law. Nor does it endow

5. The cases supporting this proposition are collected in appellees' brief at pages 63-66. See, in particular, *Kansas v. Colorado*, 206 U.S. 46, 87-88, 92.

the Federal Government with a constitutional power over irrigation waters which it otherwise lacked.

(2) The opinion points to no federal statute purporting to create state irrigation districts or to authorize them to contract with the Federal Government. Congress, very clearly, has left these matters to state law and the opinion, in terms, does not suggest otherwise.

(3) As if to underscore this point (2 above), the opinion expressly disavows (p. 14) any intention of determining whether the federal power could be constitutionally invoked to prevent a state from denying authority to its water districts and agencies to contract with the United States.

(4) The opinion refers (p. 19), as "beyond challenge", to the power of the Federal Government "to impose reasonable conditions on the use of federal funds, federal property, and federal privileges."[6] But what is here involved is not the authority of the Federal Government "to impose" conditions, reasonable or otherwise, on the receipt of a benefit, but authority "to impose" the benefit itself, along with the conditions. That is, the opinion holds (p. 16) that Section 5 (acreage limitation) controls Section 8 (integrity of state water law) and requires the Secretary of the Interior to attach the acreage limitation as a condition in contracting with an irrigation district to deliver water to it. But it is a very different thing to say that any federal law does, or constitutionally could, force the irrigation district to enter into a contract in the first place, contrary to the law of the state which created and governs the district. The state, finding the conditions under which the benefit is

6. It may be noted that the cases cited by the Court in this connection do not involve any clash between the federal conditions and state law. At pages 67-74 of appellees' brief, numerous cases are cited for the proposition that in proceeding under the general welfare and property clauses, the Federal Government must respect state law.

offered unacceptable under its statutes and constitution, manifestly should be free to decline the benefit. In order to support a determination of validity, it would be necessary to hold that federal law does, and constitutionally can, "impose" the instant contracts. The Court's opinion contains no such assertion.

In summary, the Supreme Court of California held that the instant contracts, in failing to provide a permanent water right and in requiring discrimination against members of an irrigation district in the delivery of water, were contrary to the statutory law of California and could not have been authorized by the legislature under the state constitution. (AJS 58-59.) This Court's opinion refers the reader to no federal provision, statutory or constitutional, which validates contracts such as are here involved in defiance of state law as so declared. The Court's opinion, therefore, fails to supply a logical connection between its determination that the Supreme Court of California misconstrued Section 8 and its conclusion that state law was erroneously applied to test the validity of the contracts. There is no proferred basis for its statement (p. 3) that "the contracts" are "controlled by federal law and valid as against the objections made."[7]

7. We have in Points I and II, above, set forth the two grounds which would appear to justify a rehearing under the practice of the Court. If a rehearing is granted, there are other issues, such as the significance of the Act of July 2, 1956, which should be reexamined.

CONCLUSION

For these reasons, there should, in any event, be a clarification of the Court's decisions and judgments so as expressly to leave open further determination of state questions in the Supreme Court of California. The proper course, we submit, is the granting of a rehearing on all issues.

Respectfully submitted,

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Dated: August 1, 1958.

Certificate

The undersigned, one of the attorneys for appellees in these proceedings, hereby certifies that the foregoing petition for rehearing and clarification is presented in good faith and not for delay.

ALVIN J. ROCKWELL